



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delaware Eastwind, Inc.
File: B-228533
Date: November 18, 1987

DIGEST

1. Protest filed 4 months following award, although allegedly shortly after information concerning the basis of protest was received, is dismissed as untimely since the protester failed to diligently seek information to determine whether a basis of protest existed.
2. The General Accounting Office will not consider the merits of an untimely protest or invoke the "significant issue" exception to our timeliness regulations where the issues raised are not matters of first impression or of widespread interest to the procurement community.

DECISION

Delaware Eastwind, Inc. (DEW), protests the award of a contract to Interstate Manufacturing Co., Inc. (Interstate) under request for proposals (RFP) No. DLA100-87-R-0409 issued by the Defense Personnel Support Center (DPSC), Defense Logistics Agency (DLA), for the acquisition of wet weather parkas. The protester contends that DLA's award of this contract to Interstate on a sole-source basis was improper.

We dismiss the protest as untimely.

According to DLA, a negotiated letter contract was awarded to Interstate on June 8, 1987, and the award was synopsisized in the July 7 issue of the Commerce Business Daily (CBD). On August 31, DEW filed a Freedom of Information Act (FOIA) request with the agency requesting copies of all documents pertaining to the procurement which resulted in the award to Interstate. DLA's response to the FOIA request was allegedly received by DEW on or about October 5. On October 15, DEW filed a protest with this Office challenging the alleged sole-source award on several bases.

040635

134463

DLA argues, and we agree, that the protest is untimely under our Bid Protest Regulations which require that a protest, such as this, be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). DLA states that DEW had constructive knowledge of the award as of July 7 and it was incumbent on the protester to diligently pursue the information that formed the basis of its protest within a reasonable time. DLA contends that waiting approximately 2 months after the synopsis was published in the CBD before attempting to obtain information on the award cannot be considered diligent pursuit.

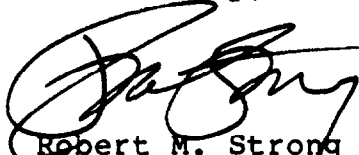
Protesters have a duty to diligently pursue information that reasonably would be expected to reveal whether a basis for protest exists, see Rubber Crafters, Inc., B-225421, Oct. 31, 1986, 86-2 C.P.D. ¶ 508; and if they do not do so within a reasonable time, we will dismiss the protest as untimely. Greishaber Manufacturing Co., Inc., B-222435, Apr. 4, 1986, 86-1 C.P.D. ¶ 330. In its protest letter, DEW states that it "heard about the award during the summer and requested documents under [FOIA]." The protester further states in its rebuttal to the agency's request for dismissal that its protest was filed within 10 days of DLA's response to the FOIA request. However, we find that the protester knew or should have known of the award on or before July 7, and DEW failed in its duty to pursue diligently the basis of its protest through its delay of almost 2 months before attempting to obtain information concerning the award. Thus, DEW's October 15 protest to this Office, filed more than 4 months after award and 3 months after notice of the award, is untimely and will not be considered on the merits. Id.

DEW requests that we consider its allegations, even if we find they are untimely, because its protest raises a significant issue of fraud so as to invoke an exception to the timeliness requirements of our Regulations, 4 C.F.R. § 21.2(c). DEW contends that the circumstances surrounding this alleged sole-source procurement "raise obvious questions" as to whether this procurement was fraudulent. As support for this allegation, the protester points out that DPSC is under investigation for fraud and other illegal activities associated with its procurement function.

In order to prevent the timeliness requirements from becoming meaningless, the significant issue exception is strictly construed and seldom used. The exception is therefore limited to considering untimely protests only when we believe that the subject matter of the protest is of widespread importance or interest to the procurement community and involves a matter that has not been considered

on the merits in previous decisions. See Pembroke Machine Co., Inc., B-227360, June 11, 1987, 87-1 C.P.D. ¶ 588. We do not find DEW's protest to fall within the meaning of this exception since the central issue in its protest, i.e., the validity of the sole-source award which was allegedly made in contravention of applicable procurement regulations has previously been decided by this Office. See for example Fairchild Weston Systems, Inc., B-225649, May 6, 1987, 87-1 C.P.D. ¶ 479; Cerberonics Inc., B-225626, B-225627, Apr. 30, 1987, 87-1 C.P.D. ¶ 463. Moreover, we find DEW's allegation of fraud in the conduct of this procurement is unsupported and we will not invoke the significant issue exception on the basis of an unsupported allegation.

Accordingly, the protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel